



## EXPAND HEALTH REIMBURSEMENT ARRANGEMENTS

Employer-sponsored health insurance covers more than half of the American population.<sup>1</sup> For those employees, health insurance is often limited to a few options selected by a corporate administrator. Congress should codify the rule implemented under the Trump administration that expands access to employer-sponsored Health Reimbursement Arrangements (HRA).

### BACKGROUND

The Affordable Care Act (ACA) requires certain large employers – those with 50 or more full-time employees – to offer employees “minimum essential coverage under an eligible employer-sponsored plan” or risk paying a penalty to the IRS.<sup>2</sup> The “employer mandate” entrenches employer-sponsored group insurance and places health insurance decisions in the hands of corporate human resources personnel, rather than employees.

According to 2020 data from the Census Bureau, 54.4 percent of the population, or 177 million Americans, received health insurance through employers.<sup>3</sup> While some employers may want to offer group health insurance as a means of retaining employees, others may see a competitive advantage and potential cost savings in giving employees control over their health care decisions.

Many employers have little negotiating power over group insurance products. As employees age, have children, or contract significant illnesses, those health care costs are distributed to the rest of the employee group in the form of higher premiums.

Employees often bear a significant portion of any premium increase. According to the Kaiser Family Foundation, “Premium contributions by covered workers average 18% for single coverage and 30% for family coverage.”<sup>4</sup> If higher premiums or paying an increased premium share creates financial hardship for employees, they are powerless to negotiate directly with the group insurer or take their health insurance business to another provider.

Under the 21st Century Cures Act of 2016,<sup>5</sup> employers with under 50 full-time employees who do not sponsor a group health plan may fund employee health reimbursement arrangements (HRAs) to pay for nongroup plan health insurance premiums. These new HRAs, known as qualified small employer health reimbursement arrangements (QSEHRA), cap maximum reimbursement and must generally be offered on the same terms for all employees.

In 2019, the Trump administration finalized a rule that provides more flexibility to HRAs for all employers by creating two classes of HRAs, each funded with pre-tax dollars.<sup>6</sup> The first HRA class allows employees to purchase ACA-compliant individual-market insurance coverage. The other permits employers to give employees up to \$1800 tax-free dollars in order to purchase “excepted” policies such as dental or vision care and short-term insurance. On January 28, 2021, President Biden signed an executive order revoking the Trump administration’s rule on HRAs.<sup>7</sup>

## POLICY SOLUTIONS

Congress should enact legislation consolidating the types of HRAs permitted by current law and the former Trump administration regulation. HRA access should include all employers (rather than just the small businesses covered under the 21st Century Cures Act), satisfy the ACA's employer mandate, and be fully deductible to the employer and excludable from employee income.

Congress could also pass H.R. 4123, the Increasing Health Coverage through HRAs Act of 2021, codifying the Trump administration's final rule which would permit employers who offer group coverage to also contribute to an HRA to reimburse employees for medical expenses, dental and vision premiums, and premiums for short-term health insurance.

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<sup>1</sup> Katherin Keilser-Starkey and Lisa Bunch. Health Insurance Coverage in the United States: 2020, United States Census Bureau, U.S. Department of Commerce, issued Sept 2021. <https://www.census.gov/content/dam/Census/library/publications/2021/demo/p60-274.pdf>

<sup>2</sup> 26 U.S.C. § 4980H (2013).

<sup>3</sup> Keilser-Starkey, *supra* note 1.

<sup>4</sup> 2019 Employer Health Benefits Survey, Henry J. Kaiser Family Foundation (Sept. 25, 2019), <https://www.kff.org/report-section/ehbs-2019-section-1-cost-of-health-insurance/>

<sup>5</sup> 21st Century Cures Act of 2016, Pub. L. No. 114-255, (Dec. 13, 2016).

<sup>6</sup> 84 FR 28888 (2019).

<sup>7</sup> "Strengthening Medicaid and the Affordable Care Act." January 28, 2021. <https://www.federalregister.gov/documents/2021/02/02/2021-02252/strengthening-medicare-and-the-affordable-care-act>